

Attorney General

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Phoenix, Arizona 85007

Robert H. Corbin

November 28, 1989

The Honorable Don Kenney
State Representative
State Capitol - House Wing
Phoenix, Arizona 85007

Re: I89-099 (R89-068)

Dear Representative Kenney:

You have asked our opinion on a variety of questions concerning the authority of the Arizona Department of Transportation (ADOT) to determine the locations of highways to be constructed in Maricopa County with Proposition 300 excise tax revenues.

The authority to establish, open, alter, vacate or abandon any portion of a state route or a state highway is vested in the Transportation Board. A.R.S. §§ 28-106 and -1861; see also Cota-Robles v. Mayor and Council of the City of Tucson, 44 Ariz. Adv. Rep. 37 (App. September 26, 1989). The Transportation Board may change a highway route where it determines, in the reasonable exercise of its discretion, that such change is in the best interest of the public. State ex rel. Sullivan v. Carrow, 57 Ariz. 434, 439, 114 P.2d 896, 898 (1941); Rowland v. McBride, 35 Ariz. 511, 521-522, 281 P.207, 210-211 (1929). See also Ariz. Att'y Gen. Op. I87-106.

Proposition 300, approved by the voters of Maricopa County on October 8, 1985, established a transportation excise tax to provide funding for the construction of controlled access highways and the development of public transportation services within Maricopa County.

Proposition 300 sets forth several limitations on the expenditure of the transportation excise funds. Specifically, the tax revenues may be utilized only to:

- (1) Accumulate funds to be held in trust to design, acquire rights of way and to construct controlled access highways in the transportation corridors identified in the Maricopa Association of Government's regional transportation plan.

(2) Service bonds issued to design, to finance acquisition of rights of way and to construct controlled access highways identified in such plan.

(3) Develop a regional public transportation plan for Maricopa County.

(4) Increase funding to operate a regional bus system, dial-a-ride and other special needs transportation services for Maricopa County.

Proposition 300 does not contain any highway corridor designations. Rather, Proposition 300 limits expenditures of transportation excise tax revenues to the highway corridors "shown, or to be shown" in the Maricopa Association of Government's regional transportation plan (MAG Plan).

The Proposition's description of the highway corridors as those "shown or to be shown" in the MAG Plan was reiterated in the publicity pamphlet provided to the voters prior to the election. Publicity Pamphlet, Special Election, October 8, 1985, p. 2. In addition, the summary of the MAG Plan included in the publicity pamphlet contains the statement that "[f]inal alignment and design of facilities is subject to public hearings." *Id.* at p. 4. A map depicting the MAG Plan was included with the pamphlet, bearing the legend that the precise final routes for all highways are "subject to public hearings and local input." *Id.* at p. 5. We note the highways upon which you expressed concern, *i.e.*, the Paradise Corridor, the Grand Avenue Expressway, and the Pima Road portion of the Outer Loop Highway were each described in the publicity pamphlet. *Id.* pp. 4-5.

Turning to the question of whether ADOT is bound by the highway locations designated in the MAG Plan, it is our opinion that the Transportation Board may, in the reasonable exercise of its discretion, choose to construct the highway in such location as it believes is in the best interest of the public. However, Proposition 300 limits expenditures of its excise tax revenues to those highway corridors identified in the MAG Plan. Were the Transportation Board to locate a highway on a corridor not a part of the MAG Plan, Proposition 300 transportation excise tax revenues could not be expended upon the highway. This conclusion was previously reached by this office in Ariz. Atty. Gen. Op. 187-106.

It is our opinion that neither the official ballot nor the publicity pamphlet for Proposition 300 contained precise highway corridor designations. Rather, the Proposition limited expenditures to those highway corridors identified or to be identified in the MAG Plan. Should ADOT determine in its discretion to build a highway in a location other than that designated in the MAG Plan, Proposition 300 excise tax revenues could not be expended upon the highway.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Corbin", written in a cursive style.

BOB CORBIN
Attorney General

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